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ADMIRALTY.

1. If a vessel, seaworthy at the beginning of the voyage, is afterwards stranded by the negligence of her master, the ship owner, who has exercised due diligence to make his vessel in all respects seaworthy, properly manned, equipped and supplied, under the provisions of § 3 of the act of February 13, 1893, c. 105, 27 Stat. 495, has not a right to general average contribution for sacrifices made and suffered by him subsequent to the stranding, in successful efforts to save vessel, freight and cargo. *The Irrawaddy*, 187.
2. The main purposes of the act of February 13, 1893, known as the Harter Act, were to relieve the ship owner from liability for latent defects, not discoverable by the utmost care and diligence, and, in the event that he has exercised due diligence to make his vessel seaworthy, to exempt him and the ship from responsibility for damages or loss resulting from faults or errors in navigation or in the management of the vessel; but the court cannot say that it was the intention of the act to allow the owner to share in the benefits of a general average contribution to meet losses occasioned by faults in the navigation and management of the ship. *Ib.*
3. In determining the effect of this statute in restricting the operation of general and well-settled principles, the court treats those principles as still existing, and limits the relief from their operation afforded by the statute to that called for by the language of the statute. *Ib.*
4. A provision in a bill of lading, that the carrier "shall not be liable for loss or damage caused by the perils of the sea," or by "accidents of navigation," does not exempt the carrier from liability for damage to part of the cargo by sea water under these circumstances: While the ship was being unloaded at the dock in her port of her destination, a case of detonators in her hold exploded, without fault of any one engaged in carrying or discharging the cargo, and the explosion made a large hole in the side of the ship, through which the water rapidly entered the hold, and damaged other goods. *The G. R. Booth*, 450.
5. A ship, whose port holes between decks are fitted with the usual glass covers and the usual iron shutters, and have no cargo stowed against them, is not unseaworthy by reason of beginning a voyage in fair weather with the glass covers tightly closed, and the iron shutters left

open for the admission of light, but capable of being speedily got at and closed if occasion should require; and any subsequent neglect in not closing the iron covers is a "fault or error in navigation or in the management of the vessel," within the meaning of section 3 of the act of Congress of February 13, 1893, c. 105, known as the Harter Act. *The Silvia*, 462.

6. Section 3 of the Harter Act applies to foreign vessels. *Ib.*

AMENDMENT.

The decrees in the several cases are modified by striking from them the words referred to in the application of the appellants, and set forth in the opinion of the court. *Smyth* v. *Ames*, 361.

See MANDATE.

CHATTEL MORTGAGE.

1. A description in a chattel mortgage of a given number of articles or animals out of a larger number is not sufficient; but such a mortgage is valid against those who know the facts. *Northwestern Bank* v. *Freeman*, 620.
2. A purchaser of personal property, which is mortgaged, is charged with knowledge of every fact shown by the records, and is presumed to know every other fact which an examination, suggested by the records, would have disclosed. *Ib.*
3. Under the rule that the incident covers the principal, a mortgage of domestic animals covers the increase of such animals, though it be silent as to such increase. *Ib.*

CASES AFFIRMED OR FOLLOWED.

Schollenberger v. *Pennsylvania*, 171 U. S. 1, followed. *Collins* v. *New Hampshire*, 171 U. S. 30.

Del Monte Mining Co. v. *Last Chance Mining Co.*, 171 U. S. 55, followed. *Clark* v. *Fitzgerald*, 92.

Ely's Administrator v. *United States*, 171 U. S. 220, followed. *United States* v. *Maish*, 242.

Camou v. *United States*, 171 U. S. 277, followed: *Perrin* v. *United States*, 292.

Mining Co. v. *Tarbet*, 98 U. S. 463, affirmed. *Walreth* v. *Champion Mining Co.*, 293.

White v. *Berry*, 171 U. S. 366, followed. *White* v. *Butler*, 379.

King v. *Mullins*, 171 U. S. 404, followed. *King* v. *Panther Lumber Co.*, 437.

Reusens v. *Lawson*, 91 Virginia, 226, followed. *King* v. *Mullens*, 404.

Hopkins v. *United States*, 171 U. S. 578, followed. *Anderson* v. *United States*, 604.

See CONSTITUTIONAL LAW, 6; JURISDICTION, A, 1, 13; EJECTMENT, 2; MINERAL LAND, 8, 10; PUBLIC LAND, 6.

CONDITION PRECEDENT.

1. Where an undertaking on one side is in terms a condition to the stipulation on the other, that is, where the contract provides for the performance of some act, or the happening of some event, and the obligations of the contract are made to depend on such performance or happening, the conditions are conditions precedent; but when the act of one is not necessary to the act of the other, and the loss and inconvenience can be compensated in damages, performance of the one is not a condition precedent to the performance of the other. *New Orleans* v. *Texas & Pacific Railway Co.*, 312.
2. It being shown by the record that the railway terminus from which the extension along Claiborne street was to be made was never constructed, and that the crossing from Westwego to the land in front of the park was also never established, but, on the contrary, that the company extended its road down the river to Gouldsboro, where it made its main crossing, the right to the extension and the right to the use of the batture no longer obtains. *Ib.*
3. The suspensive condition, by which the rights of the company under the original ordinance were held in abeyance, operates also upon the lease, and the mere payment of rent did not change the nature of the suspensive condition, or work an estoppel. *Ib.*

CONFEDERATE STATE LEGISLATION.

1. Transactions between persons actually residing within the territory dominated by the government of the Confederate States were not invalid for the reason only that they occurred under the sanction of the laws of that government or of any local government recognizing its authority. *Baldy* v. *Hunter*, 388.
2. Within such territory, the preservation of order, the maintenance of police regulations, the prosecution of crimes, the protection of property, the enforcement of contracts, the celebration of marriages, the settlement of estates, the transfer and descent of property, and similar or kindred subjects, were, during the war, under the control of the local governments constituting the so called Confederate States. *Ib.*
3. What occurred or was done in respect of such matters under the authority of the laws of these local *de facto* governments should not be disregarded or held invalid *merely* because those governments were organized in hostility to the Union established by the National Constitution; this,

because the existence of war between the United States and the Confederate States did not relieve those who were within the insurrectionary lines from the necessity of civil obedience, nor destroy the bonds of society, nor do away with civil government or the regular administration of the laws, and because transactions in the ordinary course of civil society as organized within the enemy's territory, although they may have indirectly or remotely promoted the ends of the *de facto* or unlawful government organized to effect a dissolution of the Union, were without blame "except when proved to have been entered into *with actual intent* to further invasion or insurrection." *Ib.*

4. Judicial and legislative acts in the respective States composing the so called Confederate States should be respected by the courts if they were not "hostile *in their purpose* or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution." *Ib.*
5. Applying these principles to the present case, the court is of opinion that the mere investment by Hunter, as guardian, of the Confederate funds or currency of his ward in bonds of the Confederate States should be deemed a transaction in the ordinary course of civil society, and not, necessarily, one conceived and completed with an actual intent thereby to aid in the destruction of the Government of the Union. *Ib.*

CONSTITUTIONAL LAW.

1. Oleomargarine has, for nearly a quarter of a century, been recognized in Europe and in the United States as an article of food and commerce, and was recognized as such by Congress in the act of August 2, 1886, c. 840; and, being thus a lawful article of commerce, it cannot be wholly excluded from importation into a State from another State where it was manufactured, although the State into which it was imported may so regulate the introduction as to insure purity, without having the power to totally exclude it. *Schollenberger* v. *Pennsylvania*, 1.
2. A sale of a ten pound package of oleomargarine, manufactured, packed, marked, imported and sold under the circumstances set forth in detail in the special verdict in this case, was a valid sale, although made to a person who was himself a consumer; but it is not decided that this right of sale extended beyond the first sale by the importer after its arrival within the State. *Ib.*
3. The importer had not only a right to sell personally, but he had the right to employ an agent to sell for him, and a sale thus effected was valid. *Ib.*
4. The right of the importer to sell does not depend upon whether the original package was suitable for retail trade or not, but is the same, whether made to consumers or to wholesale dealers, provided he sells in original packages. *Ib.*
5. Act No. 21 of the legislature of Pennsylvania, enacted May 21, 1885,

enacting that "no person, firm or corporate body shall manufacture out of any oleaginous substance, or any compound of the same, other than that produced from unadulterated milk or of cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell or offer for sale, or have in his, her or their possession with intent to sell the same as an article of food" and making such act a misdemeanor, punishable by fine and imprisonment, is invalid to the extent that it prohibits the introduction of oleomargarine from another State, and its sale in the original package. *Ib.*

6. Following the decision in *Schollenberger* v. *Pennsylvania*, the court holds that the statute of New Hampshire prohibiting the sale of oleomargarine as a substitute for butter, unless it is of a pink color, is invalid, as being, in necessary effect, prohibitory. *Collins* v. *New Hampshire*, 30.
7. The right to equal protection of the laws is not denied by a state court when it is apparent that the same law or course of procedure would be applied to any other person in the State under similar circumstances and conditions. *Tinsley* v. *Anderson*, 101.
8. The act of the legislature of North Carolina of January 21, 1891, must be regarded as an act providing for the inspection of fertilizers and fertilizing materials in order to prevent the practice of imposition on the people of the State, and the charge of twenty-five cents per ton as intended merely to defray the cost of such inspection; and as it is competent for the State to pass laws of this character, the requirement of inspection and payment of its cost does not bring the act into collision with the commercial power vested in Congress, and clearly this cannot be so as to foreign commerce, for clause two of section ten of article one expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and the same principle must apply to interstate commerce. *Patapsco Guano Co.* v. *North Carolina*, 345.
9. The act of the legislature of Missouri of April 8, 1895, Missouri Laws 1895, page 284, providing that "comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute," is not *ex post facto*, under the Constitution of the United States, when applied to prosecutions for crimes committed prior to its passage. *Thompson* v. *Missouri*, 380.
10. The system established by the State of West Virginia, under which lands liable to taxation are forfeited to the State by reason of the owner not having them placed or caused to be placed, during five consecutive years, on the proper land books for taxation, and caused himself to be charged with the taxes thereon, and under which, on

petition required to be filed by the representative of the State in the proper Circuit Court, such lands are sold for the benefit of the school fund, with liberty to the owner, upon due notice of the proceeding, to intervene by petition and secure a redemption of his lands from the forfeiture declared by paying the taxes and charges due upon them, is not inconsistent with the due process of law required by the Constitution of the United States or the constitution of the State. *King* v. *Mullins*, 404.

11. The statutes of the State of New York, providing that "every corporation, joint stock company or association whatever, now or hereafter incorporated, organized or formed under, by or pursuant to law in this State or in any other State or country and doing business in this State, except only saving banks and institutions for savings, life insurance companies, banks, foreign insurance companies, manufacturing or mining corporations or companies wholly engaged in carrying on manufactures or mining ores within this State, and agricultural and horticultural societies or associations, which exceptions, however, shall not include gas companies, trust companies, electric or steam heating, lighting and power companies, shall be liable to and shall pay a tax as a tax upon its franchise or business into the state treasury annually, to be computed as follows:" and that "the amount of capital stock which shall be the basis for tax . . . in the case of every corporation, joint stock company and association liable to taxation thereunder shall be the amount of capital stock employed within this State," as construed by the highest court of that State, are not repugnant to the Constitution of the United States. *New York* v. *Roberts*, 658.

12. It must be regarded as finally settled by frequent decisions of this court, that, subject to certain limitations as respects interstate and foreign commerce, a State may impose such conditions upon permitting a foreign corporation to do business within its limits as it may judge expedient; and that it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital used within the State. *Ib.*

See INTERSTATE COMMERCE.

CONTRACT.

1. In no way, and through no channels, directly or indirectly, will courts allow an action to be maintained for the recovery of property delivered under an illegal contract, where, in order to maintain such recovery, it is necessary to have recourse to that contract; but the right of recovery must rest on a disaffirmance of the contract, and is permitted only because of the desire of courts to do justice, as far as possible to the party who has made payment or delivered property under a void agreement, which in justice he ought to recover, and no recovery will be

permitted which will weaken said rule founded upon the principles of public policy. *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 138.

2. Acting upon those settled principles the court decides: (1) That the Central Company is entitled to recover from the Pullman Company the value of the property transferred by it to that company when the lease took effect, with interest, as that property has substantially disappeared, and cannot now be returned; (2) That the value of that property is not to be ascertained from the market value of the shares of the Central Company's stock at that time, but by the value of the property transferred; (3) That the value of the contracts with railroad companies transferred by the Central Company forms no part of the sum which it is entitled to recover; (4) That the same principle applies to the patents transferred which had all expired; (5) That it is not entitled to recover anything for the breaking up of its business by reason of the contracts being adjudged illegal. *Ib.*

See CONDITION PRECEDENT.

CRIMINAL LAW.

1. An indictment under Rev. Stat. § 3296, for the concealment of distilled spirits on which the tax has not been paid, removed to a place other than the distillery warehouse provided by law, which charges the performance of that act at a particular time and place, and in the language of the statute, is sufficiently certain. *Pounds* v. *United States*, 35.
2. When there is nothing in the record to show that the jury in a criminal case separated before the verdict was returned into court, and the record shows that a sealed verdict was returned by the jury by agreement of counsel for both parties in open court, and in the presence of the defendant, the verdict was rightly received and recorded. *Ib.*

DISCONTINUANCE.

1. In order to authorize a denial of a plaintiff's motion to discontinue a suit in equity, there must be some plain legal prejudice to the defendant, other than the mere prospect of future litigation, rendered possible by the discontinuance. *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 138.
2. Unless there be an obvious violation of a fundamental rule of a court of equity, or an abuse of the discretion of the court, the decision of a motion for leave to discontinue will not be reviewed here. *Ib.*
3. The decision of the Circuit Court in denying the motion of the Pullman Company to discontinue its suit was right, as was also its decision permitting the Central Company to file a cross bill. *Ib.*

DISTRICT OF COLUMBIA.

The commissioners of the District of Columbia have no power to agree to a common law submission of a claim against the District. *District of Columbia* v. *Bailey*, 161.

DRAWBACK.

The court of claims made the following findings of fact in this case. I. During the years 1889, 1890 and 1891 the claimant was a corporation existing under the laws of New Jersey, organized in 1888, and having a factory for carrying on its business at Bayonne, in that State. II. In 1889 and 1890 the claimant imported from Canada box shooks, and from Europe steel rods, upon which importation duties amounting in the aggregate to $39,636.20 were paid to the United States, of which sum $837.68 was paid on the importation of the steel rods. III. The box shooks imported as set forth in finding II were manufactured in Canada from boards, first being planed and then cut into required lengths and widths, intended to be substantially correct for making into boxes without further labor than nailing the shooks together. They were then tied up in bundles of sides, of ends, of bottoms, and of tops of from fifteen to twenty-five in a bundle for convenience in handling and shipping. IV. The shooks so manufactured in Canada and imported into the United States as aforesaid were, at the claimant's factory in Bayonne, New Jersey, constructed into the boxes or cases set forth in Exhibit E to the petition herein, by nailing the same together with nails manufactured in the United States out of the steel rods imported as aforesaid, and by trimming when defective in length or width to make the boxes or cases without projecting parts, *i.e.*: the shooks were imported in bundles of ends, of sides, of tops and of bottoms, each part coming in bundles separated from the bundles of other parts. From one of these bundles of ends the ends of a box are selected, to which the sides taken indiscriminately from any bundle of sides are nailed by nailing machines; then the sides are trimmed off even with the ends by saws; then by bottoming machines bottoms taken from any bundle of bottoms are nailed on; then the bottoms are trimmed even with the sides by saws; then, after being filled with cans, the tops are nailed on; and then the boxes or cases are ready for exportation. The cost of the labor expended in the United States in the necessary handling and in the nailing and trimming of the boxes as aforesaid was equal to about one tenth of the value of the boxes. The principal part of the labor performed in trimming the boxes was occasioned by the Canadian manufacturer not cutting the shooks into the required lengths and widths for use in making the boxes, and for which the claimants sometimes charged the cost of such trimming to the Canadian manufacturer. *Held*, that the company, when exporting these manufactured

boxes, was not entitled to be allowed a drawback under Rev. Stat. § 3019. *Tide Water Oil Co.* v. *United States*, 210.

EJECTMENT.

1. As neither the plaintiff nor those under whom he claims title availed themselves of the remedy provided by the statutes of West Virginia for removing the forfeiture arising from the fact that, during the years 1884, 1885, 1886, 1887 and 1888, the lands in question were not charged on the proper land books with the state taxes thereon for that period or any part thereof, the forfeiture of such lands to the State was not displaced or discharged, and the Circuit Court properly directed the jury to find a verdict for the defendants. The plaintiff was entitled to recover only on the strength of his own title. Whether the defendants had a good title or not the plaintiff had no such interest in or claim to the lands as enabled him to maintain this action of ejectment. *King* v. *Mullins*, 404.
2. *Reusens* v. *Lawson*, 91 Virginia, 226, approved and followed to the point that "In an action of ejectment the plaintiff must recover on the strength of his own title, and if it appear that the legal title is in another, whether that other be the defendant, the Commonwealth, or some third person, it is sufficient to defeat the plaintiff. If it appears that the title has been forfeited to the Commonwealth for the non-payment of taxes, or other cause, and there is no evidence that it has been redeemed by the owner, or resold, or regranted by the Commonwealth, the presumption is that the title is still outstanding in the Commonwealth." *Ib.*

EQUITY.

1. Under the circumstances disclosed in the statement of the case and in the opinion of the court in this case, the Union Trust Company cannot be allowed to set up its alleged title to the stock and bonds in controversy, as against third parties taking in good faith and without notice, and the same principle is applicable to its assignee, and to creditors seeking to enforce rights in his name; and, so far as this case is concerned, there is nothing to the contrary in the statute of Iowa regulating assignments for the benefit of creditors, as expounded by the Supreme Court of that State. *Hubbard* v. *Tod*, 474.
2. This court concurs in the conclusion reached by the Circuit Court and the Circuit Court of Appeals on the fact that the respondents' right to the securities was superior to that asserted by the petitioner. *Ib.*

EQUITY JURISDICTION

See REMOVAL OF PUBLIC OFFICERS.

EXECUTOR AND ADMINISTRATOR.

See JURISDICTION, A, 10.

GUARDIAN AND WARD.

See CONFEDERATE STATE LEGISLATION, 5.
NEW MEXICO, LAWS OF, 3.

HABEAS CORPUS.

1. When the committing court has jurisdiction of the subject-matter and of the person, and power to make the order for disobedience to which a judgment in contempt is rendered, and to render that judgment, then the appellate court cannot do otherwise than discharge a writ of *habeas corpus* brought to review that judgment, and secure the prisoner's discharge, as that writ cannot be availed of as a writ of error or appeal. *Tinsley* v. *Anderson*, 101.
2. It was competent for the District Court to compel the surrender of the minute book and notes in Tinsley's possession, and he could not be discharged on *habeas corpus* until he had performed, or offered to perform so much of the order as it was within the power of the District Court to impose, even though it may have been in some part invalid. *Ib.*

See JURISDICTION, A, 3.

INHERITANCE, LAWS OF.

See NEW MEXICO, LAWS OF, 2.

INTERSTATE COMMERCE.

1. Thirty-one railroad companies, engaged in transportation between Chicago and the Atlantic coast, formed themselves into an association known as the Joint Traffic Association, by which they agreed that the association should have jurisdiction over competitive traffic, except as noted, passing through the western termini of the trunk lines and such other points as might be thereafter designated, and to fix the rates, fares and charges therefor, and from time to time change the same. No party to the agreement was to be permitted to deviate from or change those rates, fares or charges, and its action in that respect was not to affect rates disapproved, except to the extent of its interest therein over its own road. It was further agreed that the powers so conferred upon the managers should be so construed and exercised as not to permit violation of the Interstate Commerce Act, and that the managers should coöperate with the Interstate Commerce Commission to secure stability and uniformity in rates, fares, charges,

etc. The managers were given power to decide and enforce the course which should be pursued with connecting companies, not parties to the agreement, which declined or failed to observe the established rates. Assessments were authorized in order to pay expenses, and the agreement was to take effect January 1, 1896, and to continue in existence for five years. The bill, filed on behalf of the United States, sought a judgment declaring that agreement void. *Held*, (1) That upon comparing this agreement with the one set forth in *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, the similarity between them suggests that a similar result should be reached in the two cases, as the point now taken was urged in that case, and was then intentionally and necessarily decided; (2) That so far as the establishment of rates and fares is concerned there is no substantial difference between this agreement and the one set forth in the *Trans-Missouri case*; (3) That Congress, with regard to interstate commerce, and in the course of regulating it in the case of railroad corporations, has the power to say that no contract or combination shall be legal, which shall restrain trade and commerce, by shutting out the operation of the general law of competition. *United States* v. *Joint Traffic Association*, 505.

2. The Kansas City Live Stock Exchange was an unincorporated volunteer association of men, doing business at its stock yards, situated partly in Kansas City, Missouri, and partly across the line separating Kansas City, Missouri, from Kansas City, Kansas. The business of its members was to receive individually consignments of cattle, hogs, and other live stock from owners of the same, not only in the States of Missouri and Kansas, but also in other States and Territories, and to feed such stock, and to prepare it for the market, to dispose of the same, to receive the proceeds thereof from the purchasers, and to pay the owners their proportion of such proceeds, after deducting charges, expenses and advances. The members were individually in the habit of soliciting consignments from the owners of such stock, and of making them advances thereon. The rules of the association forbade members from buying live stock from a commission merchant in Kansas City, not a member of the exchange. They also fixed the commission for selling such live stock, prohibited the employment of agents to solicit consignments except upon a stipulated salary, and forbade the sending of prepaid telegrams or telephone messages, with information as to the condition of the markets. It was also provided that no member should transact business with any person violating the rules and regulations, or with an expelled or suspended member after notice of such violation. *Held*, that the situation of the yards, partly in Kansas and partly in Missouri, was a fact without any weight; that such business or occupation of the several members of the association was not interstate commerce, within the meaning of the act of July 2, 1890, c. 647, "to protect trade and commerce against unlawful restraints and monopo-

lies;" and that that act does not cover, and was not intended to cover, such kind of agreements. *Hopkins* v. *United States*, 578.

3. The Traders' Live Stock Exchange was an unincorporated association in Kansas City, whose members bore much the same relation to it, and through it carried on much the same business as that carried on by the members of the Kansas City Live Stock Exchange, considered and passed upon in *Hopkins* v. *United States*, *ante*, 578. The principal difference was, that the members of the Traders' Exchange, defendants in the present proceedings, were themselves purchasers of cattle on the market, while the defendants in the former case were commission merchants who sold cattle upon commission as a compensation for their service. The articles of association of the Traders' Exchange contained the following preamble: "We, the undersigned, for the purpose of organizing and maintaining a business exchange, not for pecuniary profit or gain, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to cultivate courteous and manly conduct towards each other, and give dignity and responsibility to yard traders, have associated ourselves together under the name of Traders' Live Stock Exchange, and hereby agree, each with the other, that we will faithfully observe and be bound by the following rules and by-laws and such new rules, additions or amendments as may from time to time be adopted in conformity with the provisions thereof from the date of organization." The rules objected to in the bill in this case were the following: "Rule 10. This exchange will not recognize any yard trader unless he is a member of the Traders' Live Stock Exchange. Rule 11. When there are two or more parties trading together as partners, they shall each and all of them be members of this exchange. Rule 12. No member of this exchange shall employ any person to buy or sell cattle unless such person hold a certificate of membership in this exchange. Rule 13. No member of this exchange shall be allowed to pay any order buyer or salesman any sum of money as a fee for buying cattle from or selling cattle to such party." *Held:* (1) That this court is not called upon to decide whether the defendants are or are not engaged in interstate commerce, because if it be conceded they are so engaged, the agreement as evidenced by the by-laws is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act; (2) That, following the preceding case, in order to come within the provisions of the statute the direct effect of an agreement or combination must be in restraint of that trade or commerce which is among the several States, or with foreign nations; (3) That where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct or restrain that commerce, but that it was entered

into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object; (4) That the rules are evidently of a character to enforce the purpose and object of the exchange as set forth in the preamble, and that for such purpose they are reasonable and fair, and that they can possibly affect interstate trade or commerce in but a remote way, and are not void as violations of the act of Congress. *Anderson* v. *United States*, 604.

See CONSTITUTIONAL LAW, 1–6.

JUDGMENT.

See JURISDICTION, A, 9.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. *Eustis* v. *Bolles*, 150 U. S. 361, affirmed to the points: (1) That to give this court jurisdiction of a writ of error to a state court it must appear affirmatively not only that a Federal question was presented for decision by the state court, but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it; (2) That where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question not Federal has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment. *Harrison* v. *Morton*, 38; *Pierce* v. *Somerset Railway*, 641.
2. The appellate jurisdiction of this court from a state court extends to a final judgment or decree in any suit, civil or criminal, in the highest court of a State where a decision in the suit could be had, against a title, right, privilege or immunity, specially set up and claimed under the Constitution or a treaty or statute of the United States. *Tinsley* v. *Anderson*, 101.
3. If the order of the Court of Criminal Appeals of the State of Texas, being the highest court of the State having jurisdiction of the case,

dismissing the writ of *habeas corpus* issued by one of its judges, and remanding the prisoner to custody, denied to him any right specially set up and claimed by him under the Constitution, laws or treaties of the United States, it is reviewable by this court on writ of error. *Ib.*

4. By taking an appeal to the Circuit Court of Appeals the Pullman Company did not, under the peculiar circumstances of this case, waive its right to appeal to this court, and the case being now before this court either on appeal or by the writ of certiorari, it has jurisdiction. *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 138.

5. On error or appeal to the Supreme Court of a Territory, this court is without power to reëxamine the facts, and is confined to determining whether the court below erred in the conclusions of law deduced by it from the facts by it found, and to reviewing errors committed as to the admission or rejection of testimony when the action of the court in this respect has been duly excepted to, and the right to attack the same preserved on the record. *Young* v. *Ames*, 179.

6. There is no error in the conclusions of law in this case: all the assignments of error, and the argument based thereon, rest on the assumption that the findings of fact certified by the court below are not conclusive, and that this court has the power, in order to pass upon the questions raised, to examine the weight of the evidence, and to disregard the facts as found. *Ib.*

7. The ends of justice will be best subserved by not passing upon the third assignment of error, but the rights of both parties in relation thereto may be left open for further consideration in the court below. *New Orleans* v. *Texas & Pacific Railway Co.*, 312.

8. A judgment of the highest court of a State reversing the judgment of the state court below, upon the ground that the case made out by the findings was a different case from that presented by the pleadings, and that the variance was fatal to the validity of the judgment, and on the further ground that as the defendants in error were sued jointly for a tort, a withdrawal of the action in favor of two of them also operated to release the third, presents no Federal question for the consideration of this court. *California Bank* v. *Thomas*, 441.

9. This case is dismissed because the judgment below was not a final judgment; the settled rule being that if a superior court makes a decree fixing the liability and rights of the parties, and refers the case to a master or subordinate court for a judicial purpose, such, for instance, as a statement of account upon which a further decree is to be entered, the decree is not final. *California Bank* v. *Stateler*, 447.

10. Under an act of Congress, entitled "an act for the relief of the estate" of a certain person deceased, and conferring upon the Court of Claims jurisdiction to hear and determine "the claim of the legal representatives" of that person for the proceeds in the treasury of his property taken by the United States, the executor is the legal representative, and any sum recovered by him by suit in that court

is assets of the estate and subject to the debts of the testator; and a decision of the highest court of a State in favor of creditors against the executor presents a Federal question, as to which it may be reviewed by this court upon a writ of error sued out by the executor. *Briggs* v. *Walker*, 466.

11. On the hearing of a case, brought by certiorari from a Circuit Court of Appeals on petition of one of the parties, in which the judgment of that court is made otherwise final, this court will pass only upon the errors assigned by the petitioner, and does not feel at liberty to decide whether there was error in the decree below, of which the other party might have complained. *Hubbard* v. *Tod*, 474.
12. This court has no appellate jurisdiction of capital cases from the United States court from the Northern District of the Indian Territory, such appellate jurisdiction being vested exclusively in the United States Court of Appeals in the Indian Territory. *Brown* v. *United States*, 631.
13. The court again holds that when there is color for a motion to dismiss on the ground that no Federal question was involved in a judgment of a state court, this court may, under a motion to dismiss or affirm, dispose of the case. *St. Louis Mining Co.* v. *Montana Mining Co.*, 650.

MANDATE.

The motion to amend the mandate is denied. *Central National Bank* v. *Stevens*, 108.

MEXICAN GRANT.

See PUBLIC LAND, 5, 6, 7, 8.

MINERAL LAND.

1. To the first question certified by the Circuit Court of Appeals, viz.: "1. May any of the lines of a junior lode location be laid within, upon or across the surface of a valid senior location for the purpose of defining for or securing to such junior location under-ground or extralateral rights not in conflict with any rights of the senior location?" this court returns an affirmative answer, subject to the qualification that no forcible entry is made. *Del Monte Mining and Milling Co.* v. *Last Chance Mining and Milling Co.*, 55.
2. It passes the second question, viz.: "2. Does the patent of the Last Chance Lode mining claim, which first describes the rectangular claim by metes and bounds and then excepts and excludes them from the premises previously granted to the New York Lode mining claim, convey to the patentee anything more than he would take by a grant specifically describing only the two irregular tracts which constitute the granted surface of the Last Chance claim?" because it needs no other answer than that which is contained in the discussion of the first question in its opinion. *Ib.*

3. To the third question viz.: "3. Is the easterly side of the New York Lode mining claim an 'end line' of the Last Chance Lode mining claim within the meaning of sections 2320 and 2322 of the Revised Statutes of the United States?" it gives a negative answer. *Ib.*
4. The fourth question, viz.: "4. If the apex of a vein crosses one end line and one side line of a lode mining claim, as located thereon, can the locator of such vein follow it upon its dip beyond the vertical side line of his location?" it answers in the affirmative. *Ib.*
5. It holds that the fifth question, viz.: "5. On the facts presented by the record herein has the appellee the right to follow its vein downward beyond its west side line and under the surface of the premises of appellant?" in effect seeks from this court a decision of the whole case, and therefore is not one which it is called upon to answer. *Ib.*
6. In discussing the first of these questions the court holds: (1) That it is dealing with statutory rights, and may not go beyond the terms of the statutes; (2) That as Congress has prescribed the conditions upon which extralateral rights may be acquired, a party must bring himself within those conditions, or else be content with simply the mineral beneath the surface of his own territory; (3) That the Government does not grant the right to search for minerals in lands which are the private property of individuals, or authorize any disturbance of the title or possession of such lands; (4) That the location of a mining claim means the giving notice of that claim: that it need not follow the lines of Government surveys: that it is made to measure rights beneath the surface: and that although the statute requires it to be distinctly marked on the surface, the doing so does not prevent a subsequent location by another party upon the same, or a part of the same territory, as, in such case, the statute provides a way for determining the respective rights of the parties: (5) That the requisition in the statute that the end lines of the location should be parallel was for the purpose of bounding the under-ground extralateral rights which the owner of the location might exercise. (6) That the answer to the first question does not involve a decision as to the full extent of the rights beneath the surface which the junior locator acquires. *Ib.*
7. In discussing the fourth of these propositions the court says: "Our conclusions may be summed up in these propositions: *First*, the location as made on the surface by the locator determines the extent of rights below the surface. *Second*, the end lines, as he marks them on the surface, with the single exception hereinafter noticed, place the limits beyond which he may not go in the appropriation of any vein or veins along their course or strike. *Third*, every vein 'the top or apex of which lies inside of such surface lines extended downward vertically' becomes his by virtue of his location, and he may pursue it to any depth beyond his vertical side lines, although in so doing he

enters beneath the surface of some other proprietor. *Fourth*, the only exception to the rule that the end lines of the location as the locator places them establish the limits beyond which he may not go in the appropriation of a vein on its course or strike is where it is developed that in fact the location has been placed not along but across the course of the vein. In such case the law declares that those which the locator called his side lines are his end lines, and those which he called end lines are in fact side lines, and this upon the proposition that it was the intent of Congress to give to the locator only so many feet of the length of the vein, that length to be bounded by the lines which the locator has established of his location." *Ib.*

8. The answer given to the fourth question in *Del Monte Mining and Milling Co.* v. *Last Chance Mining and Milling Co.*, 171 U. S. 55, compels an affirmance of the judgment below in this case. *Clark* v. *Fitzgerald*, 92.

9. On the 28th of April, 1871, on a previous location made in 1857, the Providence Gold and Silver Mining Company obtained a patent in which it was recited that it was "the intent and meaning of these presents to convey" to the company "the vein or lode in its entire width for the distance of 3100 feet along the course thereof." Under that act a patent could be issued for only one vein; but the act of May 10, 1872, c. 152, gave to all locations theretofore made, as well as to all thereafter made, all veins, lodes and ledges, the top or apex of which lies inside of the surface lines. September 29, 1877, the Champion Mining Company made a location upon the Contact Vein, which overlapped the Providence location, both as to surface ground and lode. In 1884 a dispute took place, which brought about a relocation of the lode line of the Champion Company; but eventually the conflicting claims resulted in this suit. *Held*, (1) That the extent of the rights passing under the act of 1866 was decided by this court in *Mining Co.* v. *Tarbet*, 98 U. S. 463, viz.: that "the right to follow the dip of the vein is bounded by the end lines of the claim;" (2) That that right stops at the end line of the lode location, terminated by vertical lines drawn downward; (3) That the original location and lode determined those end lines. *Walrath* v. *Champion Mining Co.*, 293.

10. The following propositions, announced in *Del Monte Mining Co.* v. *Last Chance Mining Co.*, *ante*, 55, are affirmed with the addition that the end lines of the original veins shall be the end lines of all the veins found within the surface boundaries: "*First*, the location as made on the surface by the locator determines the extent of rights below the surface. *Second*, the end lines, as he marks them on the surface, with the single exception hereinafter noticed, place the limits beyond which he may not go in the appropriation of any vein or veins along their course or strike. *Third*, every vein 'the top or apex of which lies inside of such surface lines extended downward vertically' becomes his by virtue of his location, and he may pursue it to any depth beyond

his vertical side lines, although in so doing he enters beneath the surface of some other proprietor. *Fourth*, the only exception to the rule that the end lines of the location as the locator places them establish the limits beyond which he may not go in the appropriation of a vein on its course or strike is where it is developed that in fact the location has been placed not along but across the course of the vein. In such case the law declares that those which the locator called his side lines are his end lines, and those which he called end lines are in fact side lines, and this upon the proposition that it was the intent of Congress to give to the locator only so many feet of the length of the vein, that length to be bounded by the lines which the locator has established of his location." *Ib.*

11. There is no merit in the contention that by agreement, by acquiescence, and by estoppel, the line *f-g* on the plan has become the end line of the two claims. *Ib.*
12. It is the end lines alone which define the extralateral rights, and they must be straight lines, not broken or curved lines, and to such the right on the vein below is strictly confined. *Ib.*
13. When a location is made of a mining claim, the area becomes segregated from the public domain and the property of the locator, and he may sell it, mortgage it or part with the whole or any portion of it as he may see fit; and a contract for such sale is legal and will be enforced by the court. *St. Louis Mining Co.* v. *Montana Mining Co.*, 650.
14. Where an application to enter a mining claim embraces land claimed by another, the latter is under no obligation to file an adverse claim; but he may make a valid settlement with the applicant by contract, which can be enforced against him after he obtains his patent. *Ib.*

MORTGAGE.

See CHATTEL MORTGAGE.

MUNICIPAL CORPORATION.

At the time when the plaintiff in error received from the city of Detroit exclusive authority to construct and operate its railways in that city, the common council of Detroit had no power, either inherent or derived from the legislature, to confer an exclusive privilege thereto. *Detroit Citizens' Street Railway Co.* v. *Detroit Railway*, 48.

NEW MEXICO, LAWS OF.

1. An order signed in vacation by the several members of the Supreme Court of the Territory of New Mexico cannot be considered as an order of the court. *Naeglin* v. *De Cordoba*, 638.
2. The statutes of New Mexico provide that, in the absence of legitimate children, illegitimate children inherit. *Ib.*

3. A natural guardian has no power to release the claim of a ward to an inheritance without the sanction of some tribunal. *Ib.*

PRACTICE.

See NEW MEXICO, LAWS OF, 1.

PUBLIC LAND.

1. The substantial rights of the defendant were not prejudiced by the ruling of the trial court sustaining the demurrer to the first equitable plea and refusing leave to file the second, and such ruling involved merely a question of state practice. *Johnson* v. *Drew*, 93.
2. The evidence in the case shows that the particular lots of land described in the declaration were not embraced in the Fort Brooke reservation when the patent was issued. *Ib.*
3. A party cannot defend against a patent duly issued for land which is at the time a part of the public domain, subject to administration by the land department, and to disposal in the ordinary way, upon the ground that he was in actual possession of the land at the time of the issue of the patent. *Ib.*
4. The act of Congress of July 5, 1884, c. 214, 23 Stat. 103, concerning the disposal of abandoned and useless military reservations, has no significance in this case, as the patent had issued and the title passed from the Government prior to its enactment. *Ib.*
5. The grant which is the subject of controversy in this case was one which, at the time of the cession in 1853, was recognized by the government of Mexico as valid, and therefore is one which it is the duty of this Government to respect and enforce to the extent of one and three fourths sitios. *Ely's Administrator* v. *United States*, 220.
6. In *Ainsa* v. *United States*, 161 U. S. 208, it was decided, with reference to such grants, that while monuments control courses and distances, and courses and distances control quantity, where there is uncertainty in specific description, the quantity named may be of decisive weight, and necessarily is so if the intention to convey only so much and no more is plain: and this case comes within that rule. *Ib.*
7. In order to the confirmation of any claim, the Court of Private Land Claims, under the act of March 3, 1891, c. 529, 26 Stat. 854, creating that tribunal, must be satisfied not merely of the regularity in form of the proceedings, but that the official body or person, assuming to make the grant, was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified; and the same rule applies to this court on appeal. *Faxon* v. *United States*, 244.
8. The Court of Private Land Claims held, in this case, that if the lands which are the subject of controversy belonged to the class of temporalities, it was clear that the treasurer of the department had no power to

make a sale by his sole authority, whether the value exceeded five hundred dollars or not; and if the lands did not belong to that class, nevertheless, there was the same want of power under the laws of Mexico in relation to the disposition of the public domain. This court, concurring with the Court of Private Land Claims, further holds that this is not a case in which the sale and grant can be treated as validated by presumption. *Ib.*

9. Neither the city of Bismarck, as owner of the town site, nor its grantee Smith, can, under the circumstances disclosed in this record, disturb the possession of the Northern Pacific Railroad Company in its right of way extending two hundred feet on each side of its said road. *Northern Pacific Railroad Co.* v. *Smith*, 260.
10. The finding of the trial court, that only twenty-five feet in width has ever been occupied for railroad purposes, is immaterial. *Ib.*
11. By granting a right of way four hundred feet in width, Congress must be understood to have conclusively determined that a strip of that width was necessary for a public work of such importance, and it was not competent for a court, at the suit of a private party, to adjudge that only twenty-five feet thereof were occupied for railroad purposes in the face of the grant and of the finding that the entire land in dispute was within two hundred feet of the track of the railroad as actually constructed, and that the railroad company was in actual possession thereof by its tenants. *Ib.*
12. The precise character of the business carried on by such tenants is not disclosed, but the court is permitted to presume that it is consistent with the public duties and purposes of the railroad company; and, at any rate, a forfeiture for misuser could not be enforced in a private action. *Ib.*
13. A valid grant was made in this case, which it was not within the power of a temporary dictator to destroy by an arbitrary declaration. *Camou* v. *United States*, 277.
14. This Government discharges its full duty under the Gadsden treaty, when it recognizes a grant as valid to the amount of the land paid for. *Ib.*

See MINERAL LAND.

REMOVAL OF PUBLIC OFFICERS.

1. A court of equity has no jurisdiction over the appointment and removal of public officers, whether the power of removal is vested, as well as that of appointment, in executive or administrative boards of officers, or is entrusted to a judicial tribunal. *White* v. *Berry*, 366.
2. The jurisdiction to determine the title to a public office belongs exclusively to the courts of law, and is exercised either by certiorari, error or appeal, or by mandamus, prohibition, quo warranto, or information in the nature of a writ of quo warranto, according to the circum-

stances of the case, and the mode of procedure established by common law or by statute. *Ib.*

3. If the assignment of some one to duty as gauger at the Hannis distillery, in the place of the plaintiff, did not work his removal from office, a court of equity ought not to assume to control the discretion which under existing statutes the Executive Department has in all such matters; as interference by the judicial department in such cases would lead to the utmost confusion in the management of executive affairs. *Ib.*

RES JUDICATA.

On the findings and the facts detailed in the statement and in the opinion of this court, it is held that a former judgment of the Court of Claims in an action by Hubbell against the United States in favor of the defendant was upon the same cause of action which is set up in this suit, and, it not having been reversed, or set aside, or appealed from, the claim herein set up is *res judicata*, and the plaintiff is estopped from prosecuting it in this action. *Hubbell* v. *United States*, 203.

RAILROAD GRANTS OF PUBLIC LAND.

See PUBLIC LAND, 10, 11, 12.

SEAL FISHERIES.

1. By the agreement of March 12, 1890, between the United States and the North American Commercial Company, that company contracted to pay to the United States a rental of $60,000 per year, during the term of the contract, for the privilege of killing an agreed number of seals each year, subject to a proportionate reduction of this fixed rental, in case of a limitation in the number; and also a further sum of seven dollars, sixty-two and one half cents for each seal taken and shipped by it. *Held*, that this per capita tax was not a part of the annual rental, and was not subject to reduction as was the annual rental of $60,000 a year. *North American Commercial Co.* v. *United States*, 110.
2. The proviso in the original act for the naming of a maximum number of seals to be taken, which was not to be exceeded, and making a proportionate reduction in the fixed rental in case of a limitation of that number, remained in force through all subsequent legislation and contracts. *Ib.*
3. Assuming that the company took all the risk of a catch reduced by natural causes, yet when the number that might be killed was reduced by the act of the Government, the company was entitled to such reduction on the reserved rental as might be proper, that is, in the

same proportion as the number of skins permitted to be taken bore to the maximum. *Ib.*

4. The power to regulate the seal fisheries in the interest of the preservation of the species was a sovereign protective power, subject to which the lease was taken, and if the Government found it necessary to exercise that power, to the extent which appears, the company did not attempt to rescind or abandon, but accepted the performance involved in the delivery of the 7500 skins. *Ib.*
5. The company cannot maintain its counterclaim for damages for breach of the lease, and the Circuit Court erred in its disposition thereof. *Ib.*

STATUTE.

A. Statutes of the United States.

See Admiralty, 1, 2, 3, 5, 6;
Constitutional Law, 1;
Criminal Law, 1;
Drawback;
Interstate Commerce, 2;
Jurisdiction, A, 10;
Mineral Land, 3, 9;
Public Land, 4, 7;
Seal Fisheries, 2.

B. Statutes of States and Territories.

Missouri. *See* Constitutional Law, 8.
New Hampshire. *See* Constitutional Law, 6.
New Mexico. *See* New Mexico, Laws of, 2.
New York. *See* Constitutional Law, 11; Usury.
North Carolina. *See* Constitutional Law, 8.
Pennsylvania. *See* Constitutional Law, 5.
West Virginia. *See* Constitutional Law, 10; Ejectment, 1.

SUBMISSION.

See District of Columbia.

TAX AND TAXATION.

See Constitutional Law, 8, 10, 11.

USURY.

The New York statutes against usury cannot be interposed by a corporation, or pleaded by endorsers of its paper. *Hubbard* v. *Tod*, 474.